

AMENDED IN SENATE SEPTEMBER 1, 2011

AMENDED IN SENATE AUGUST 24, 2011

AMENDED IN SENATE JUNE 22, 2011

AMENDED IN ASSEMBLY JUNE 1, 2011

AMENDED IN ASSEMBLY MAY 17, 2011

AMENDED IN ASSEMBLY MAY 4, 2011

AMENDED IN ASSEMBLY APRIL 25, 2011

AMENDED IN ASSEMBLY MARCH 29, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1219

Introduced by Assembly Member Perea

February 18, 2011

An act to amend Sections 1747.02 and 1747.08 of the Civil Code, relating to credit cards, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1219, as amended, Perea. Credit cards: personal information.

Existing state and federal law regulate the provision of credit and the use of credit cards. Existing state law prohibits a person, firm, partnership, association, or corporation that accepts credit cards for the transaction of business from requesting or requiring the cardholder to provide personal identification information, which is then recorded, as a condition to accepting the credit card as payment in full or in part for goods or services, but provides various exceptions to this prohibition.

Existing law excepts from this prohibition the instance when the person or entity accepting the card is contractually obligated to provide personal identification information in order to complete the transaction or is obligated to collect and record the identification information by federal law.

This bill would except from the prohibition described above the instance when the person or entity accepting the card uses ~~the personal~~ *Zip Code* information for prevention of fraud, theft, or identity theft in specified retail motor fuel transactions, and would specify that state law obligations are also permissible reasons to collect and record personal information. ~~The bill would also make a statement of intent with regard to certain of these provisions.~~

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1747.02 of the Civil Code is amended
- 2 to read:
- 3 1747.02. As used in this title:
- 4 (a) “Credit card” means any card, plate, coupon book, or other
- 5 single credit device existing for the purpose of being used from
- 6 time to time upon presentation to obtain money, property, labor,
- 7 or services on credit. “Credit card” does not mean any of the
- 8 following:
- 9 (1) Any single credit device used to obtain telephone property,
- 10 labor, or services in any transaction under public utility tariffs.
- 11 (2) Any device that may be used to obtain credit pursuant to an
- 12 electronic fund transfer, but only if the credit is obtained under an
- 13 agreement between a consumer and a financial institution to extend
- 14 credit when the consumer’s asset account is overdrawn or to
- 15 maintain a specified minimum balance in the consumer’s asset
- 16 account.
- 17 (3) Any key or card key used at an automated dispensing outlet
- 18 to obtain or purchase petroleum products, as defined in subdivision
- 19 (c) of Section 13401 of the Business and Professions Code, that
- 20 will be used primarily for business rather than personal or family
- 21 purposes.

1 (b) “Accepted credit card” means any credit card that the
2 cardholder has requested or applied for and received or has signed,
3 or has used, or has authorized another person to use, for the purpose
4 of obtaining money, property, labor, or services on credit. Any
5 credit card issued in renewal of, or in substitution for, an accepted
6 credit card becomes an accepted credit card when received by the
7 cardholder, whether the credit card is issued by the same or a
8 successor card issuer.

9 (c) “Card issuer” means any person who issues a credit card or
10 the agent of that person for that purpose with respect to the credit
11 card.

12 (d) “Cardholder” means a natural person to whom a credit card
13 is issued for consumer credit purposes, or a natural person who
14 has agreed with the card issuer to pay consumer credit obligations
15 arising from the issuance of a credit card to another natural person.
16 For purposes of Sections 1747.05, 1747.10, and 1747.20, the term
17 includes any person to whom a credit card is issued for any
18 purpose, including business, commercial, or agricultural use, or a
19 person who has agreed with the card issuer to pay obligations
20 arising from the issuance of that credit card to another person.

21 (e) “Retailer” means every person other than a card issuer who
22 furnishes money, goods, services, or anything else of value upon
23 presentation of a credit card by a cardholder. “Retailer” shall not
24 mean the state, a county, city, city and county, or any other public
25 agency.

26 (f) “Unauthorized use” means the use of a credit card by a
27 person, other than the cardholder, (1) who does not have actual,
28 implied, or apparent authority for that use and (2) from which the
29 cardholder receives no benefit. “Unauthorized use” does not include
30 the use of a credit card by a person who has been given authority
31 by the cardholder to use the credit card. Any attempted termination
32 by the cardholder of the person’s authority is ineffective as against
33 the card issuer until the cardholder complies with the procedures
34 required by the card issuer to terminate that authority.
35 Notwithstanding the above, following the card issuer’s receipt of
36 oral or written notice from a cardholder indicating that it wishes
37 to terminate the authority of a previously authorized user of a credit
38 card, the card issuer shall follow its usual procedures for precluding
39 any further use of a credit card by an unauthorized person.

(g) An “inquiry” is a writing that is posted by mail to the address of the card issuer to which payments are normally tendered, unless another address is specifically indicated on the statement for that purpose, then to that other address, and that is received by the card issuer no later than 60 days after the card issuer transmitted the first periodic statement that reflects the alleged billing error, and that does all of the following:

(1) Sets forth sufficient information to enable the card issuer to identify the cardholder and the account.

(2) Sufficiently identifies the billing error.

(3) Sets forth information providing the basis for the cardholder’s belief that the billing error exists.

(h) A “response” is a writing that is responsive to an inquiry and mailed to the cardholder’s address last known to the card issuer.

(i) A “timely response” is a response that is mailed within two complete billing cycles, but in no event later than 90 days, after the card issuer receives an inquiry.

(j) A “billing error” means an error by omission or commission in (1) posting any debit or credit, or (2) in computation or similar error of an accounting nature contained in a statement given to the cardholder by the card issuer. A “billing error” does not mean any dispute with respect to value, quality, or quantity of goods, services, or other benefit obtained through use of a credit card.

(k) “Adequate notice” means a printed notice to a cardholder that sets forth the pertinent facts clearly and conspicuously so that a person against whom it is to operate could reasonably be expected to have noticed it and understood its meaning.

(l) “Secured credit card” means any credit card issued under an agreement or other instrument that pledges, hypothecates, or places a lien on real property or money or other personal property to secure the cardholder’s obligations to the card issuer.

(m) “Student credit card” means any credit card that is provided to a student at a public or private college or university and is provided to that student solely based on his or her enrollment in a public or private university, or is provided to a student who would not otherwise qualify for that credit card on the basis of his or her income. A “student credit card” does not include a credit card issued to a student who has a cocardholder or cosigner who would otherwise qualify for a credit card other than a student credit card.

1 (n) “Retail motor fuel dispenser” means a device that dispenses
2 fuel that is used to power internal combustion engines, including
3 motor vehicle engines, that processes the sale of fuel through a
4 remote electronic payment system, and that is in a location where
5 an employee or other agent of the seller is not present.

6 (o) “Retail motor fuel payment island automated cashier” means
7 a remote electronic payment processing station that processes the
8 retail sale of fuel that is used to power internal combustion engines,
9 including motor vehicle engines, that is in a location where an
10 employee or other agent of the seller is not present, and that is
11 located in close proximity to a retail motor fuel dispenser.

12 SEC. 2. Section 1747.08 of the Civil Code is amended to read:

13 1747.08. (a) Except as provided in subdivision (c), no person,
14 firm, partnership, association, or corporation that accepts credit
15 cards for the transaction of business shall do any of the following:

16 (1) Request, or require as a condition to accepting the credit
17 card as payment in full or in part for goods or services, the
18 cardholder to write any personal identification information upon
19 the credit card transaction form or otherwise.

20 (2) Request, or require as a condition to accepting the credit
21 card as payment in full or in part for goods or services, the
22 cardholder to provide personal identification information, which
23 the person, firm, partnership, association, or corporation accepting
24 the credit card writes, causes to be written, or otherwise records
25 upon the credit card transaction form or otherwise.

26 (3) Utilize, in any credit card transaction, a credit card form
27 which contains preprinted spaces specifically designated for filling
28 in any personal identification information of the cardholder.

29 (b) For purposes of this section “personal identification
30 information,” means information concerning the cardholder, other
31 than information set forth on the credit card, and including, but
32 not limited to, the cardholder’s address and telephone number.

33 (c) Subdivision (a) does not apply in the following instances:

34 (1) If the credit card is being used as a deposit to secure payment
35 in the event of default, loss, damage, or other similar occurrence.

36 (2) Cash advance transactions.

37 (3) If any of the following applies:

38 (A) The person, firm, partnership, association, or corporation
39 accepting the credit card is contractually obligated to provide

1 personal identification information in order to complete the credit
2 card transaction.

3 (B) The person, firm, partnership, association, or corporation
4 accepting the credit card in a sales transaction at a retail motor fuel
5 dispenser or retail motor fuel payment island automated cashier
6 uses the ~~personal identification~~ *Zip Code* information solely for
7 prevention of fraud, theft, or identity theft ~~or uses the personal~~
8 ~~information for any of these purposes concurrently with a purpose~~
9 ~~permitted under paragraph (4).~~

10 (C) The person, firm, partnership, association, or corporation
11 accepting the credit card is obligated to collect and record the
12 personal identification information by federal or state law or
13 regulation.

14 (4) If personal identification information is required for a special
15 purpose incidental but related to the individual credit card
16 transaction, including, but not limited to, information relating to
17 shipping, delivery, servicing, or installation of the purchased
18 merchandise, or for special orders.

19 (d) This section does not prohibit any person, firm, partnership,
20 association, or corporation from requiring the cardholder, as a
21 condition to accepting the credit card as payment in full or in part
22 for goods or services, to provide reasonable forms of positive
23 identification, which may include a driver's license or a California
24 state identification card, or where one of these is not available,
25 another form of photo identification, provided that none of the
26 information contained thereon is written or recorded on the credit
27 card transaction form or otherwise. If the cardholder pays for the
28 transaction with a credit card number and does not make the credit
29 card available upon request to verify the number, the cardholder's
30 driver's license number or identification card number may be
31 recorded on the credit card transaction form or otherwise.

32 (e) Any person who violates this section shall be subject to a
33 civil penalty not to exceed two hundred fifty dollars (\$250) for the
34 first violation and one thousand dollars (\$1,000) for each
35 subsequent violation, to be assessed and collected in a civil action
36 brought by the person paying with a credit card, by the Attorney
37 General, or by the district attorney or city attorney of the county
38 or city in which the violation occurred. However, no civil penalty
39 shall be assessed for a violation of this section if the defendant
40 shows by a preponderance of the evidence that the violation was

1 not intentional and resulted from a bona fide error made
2 notwithstanding the defendant's maintenance of procedures
3 reasonably adopted to avoid that error. When collected, the civil
4 penalty shall be payable, as appropriate, to the person paying with
5 a credit card who brought the action, or to the general fund of
6 whichever governmental entity brought the action to assess the
7 civil penalty.

8 (f) The Attorney General, or any district attorney or city attorney
9 within his or her respective jurisdiction, may bring an action in
10 the superior court in the name of the people of the State of
11 California to enjoin violation of subdivision (a) and, upon notice
12 to the defendant of not less than five days, to temporarily restrain
13 and enjoin the violation. If it appears to the satisfaction of the court
14 that the defendant has, in fact, violated subdivision (a), the court
15 may issue an injunction restraining further violations, without
16 requiring proof that any person has been damaged by the violation.
17 In these proceedings, if the court finds that the defendant has
18 violated subdivision (a), the court may direct the defendant to pay
19 any or all costs incurred by the Attorney General, district attorney,
20 or city attorney in seeking or obtaining injunctive relief pursuant
21 to this subdivision.

22 (g) Actions for collection of civil penalties under subdivision
23 (e) and for injunctive relief under subdivision (f) may be
24 consolidated.

25 (h) The changes made to this section by Chapter 458 of the
26 Statutes of 1995 apply only to credit card transactions entered into
27 on and after January 1, 1996. Nothing in those changes shall be
28 construed to affect any civil action which was filed before January
29 1, 1996.

30 ~~(i) It is the intent of the amendments made by the act adding~~
31 ~~this subdivision to clarify existing law. These clarifying~~
32 ~~amendments continue to protect personal identification information~~
33 ~~while allowing and recognizing the legitimate business need for~~
34 ~~a person, firm, partnership, association, or corporation that accepts~~
35 ~~credit cards for the transaction of business at a retail motor fuel~~
36 ~~dispenser or retail motor fuel automated payment island cashier~~
37 ~~to use personal identification information for the purposes~~
38 ~~authorized by this section.~~

39 ~~This act is an urgency statute necessary for the immediate~~
40 ~~preservation of the public peace, health, or safety within the~~

1 ~~meaning of Article IV of the Constitution and shall go into~~
2 ~~immediate effect. The facts constituting the necessity are:~~

3 ~~An urgency clause is necessary in order to create a new exception~~
4 ~~pertaining to use of credit cards in the purchase of gasoline.~~
5 ~~Immediate implementation of this statute will prevent potential~~
6 ~~disruption of gasoline station services throughout the state.~~

7 *SEC. 3. This act is an urgency statute necessary for the*
8 *immediate preservation of the public peace, health, or safety within*
9 *the meaning of Article IV of the Constitution and shall go into*
10 *immediate effect. The facts constituting the necessity are:*

11 *In order to prevent potential disruption of gasoline station*
12 *services throughout the state, it is necessary to create a new*
13 *exception to the prohibition on the collection of Zip Code*
14 *information when credit cards are used that will apply in the*
15 *purchase of gasoline and that will be implemented immediately.*